

FCC MAIL SECTION

Federal Communications Commission

DA 98-2022

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-131
Table of Allotments,)	RM-9078
FM Broadcast Stations.)	RM-9155
(Twin Falls and Hailey, Idaho) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 30, 1998

Released: October 9, 1998

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of Proposed Rule Making ("Notice"), 12 FCC Rcd 6070 (1997), issued in response to a petition for rule making filed on behalf of JTL Communications Corporation ("petitioner") proposing the allotment of FM Channel 294A to Twin Falls, Idaho, as that community's fourth local FM transmission service. Petitioner filed supporting comments in response to the Notice. Comments and a counterproposal were filed on behalf of Hailey Local Service Co. ("HLSC")² to which petitioner responded. HLSC filed reply comments as well as a petition for leave to file supplemental engineering.³ Reply comments to the counterproposal were filed on behalf of E-DA-HOE, Inc. ("E-DA-HOE"). No other comments were received.

2. In its counterproposal HLSC has requested the allotment of Channel 294C to Hailey, Idaho, as that community's first local aural transmission service and states its intention to apply for the channel, if allotted.⁴ In support of the proposal HLSC states that Hailey, an incorporated community of 3,687 persons,⁵ and the seat of Blaine County, currently lacks local

¹The community of Hailey, Idaho, has been added to the caption.

²Public Notice of the counterproposal was given August 21, 1997 (Report No. 2218).

³HLSC's petition for leave to file its supplemental engineering was filed before the cut-off date established in this proceeding, and therefore the additional engineering will be considered in formulating our resolution of this proceeding.

⁴The distance between Twin Falls and Hailey is 83.8 kilometers (25.5 miles) whereas a distance of 226 kilometers (68.9 miles) is required between Class A and C co-channel allotments.

⁵Population figures reported herein were taken from the 1990 U.S. Census unless otherwise noted.

aural service. In further support HLSC advises that Hailey contains its own local police and fire departments as well as the Blaine County sheriff's department. Further, HLSC reports that Hailey contains its own educational facilities, a library, churches, a museum, parks and recreation concerns. Additionally, petitioner advises that Hailey has its own medical and dental services and that the Hailey Chamber of Commerce Business Guide lists in excess of 100 businesses that are located in the community, including financial institutions, hotels and restaurants.

3. HLSC comments that the requested allotment of Channel 294C to Hailey will advance the third allotment priority established in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982). In contrast, HLSC avers that the allotment of Channel 294A to Twin Falls would serve the fourth allotment priority⁶ as that community is served locally by numerous aural services,⁷ and therefore the allotment of Channel 294C to Hailey should be preferred since it would fulfill a higher allotment priority. HLSC advises that Channel 294C can be allotted to Hailey with a site restriction 29.9 kilometers (18.5 miles) southeast of the community at coordinates 43-16-45 and 114-09-14.

4. In response, petitioner claims that the allotment of Channel 294A to Twin Falls would provide service to one of Idaho's largest communities containing more than 60,000 of Idaho's estimated population of 1,189,250 residents. In support of Twin Falls' importance, petitioner provided information extracted from the Twin Falls Idaho General Information Guide ("Guide"), published by the Twin Falls Area Chamber of Commerce concerning the demographics of that community as to its population growth, government structure, educational and health care facilities, as well as its importance as a regional business center for over 200,000 people in south central Idaho and northern Nevada. Having established Twin Falls importance to the local and regional population, petitioner avers that the public interest would be served by allotting Channel 294A to that community as proposed in the Notice. However, in an effort to accommodate HLSC's desire to provide a first local aural transmission service to Hailey, petitioner offers that Channel 233C could be allotted to that community⁸ rather than Channel 294C. Petitioner urges adoption of its proposal would enable the residents of both Twin Falls and Hailey, Idaho to receive a new local FM service.

5. In reply comments HLSC reiterated its intention to apply for Channel 294C at Hailey. Thereafter, in response to petitioner's alternate allotment proposal at Hailey, HLSC

⁶The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

⁷HLSC advises that Stations KEZJ-FM, Channel 239C1 and KLIX-FM, Channel 243C1 are licensed to Twin Falls and that Channel 252C1 was allotted to that community in MM Docket No. 97-28 (12 FCC Rcd 6068 (1997)). Additionally, HLSC reports that Stations KEZJ(AM), KLIX(AM), KIFI(AM), and noncommercial Stations KAWZ(FM), KBSW(FM) and KCIR(FM) are also licensed to Twin Falls.

⁸Coordinates specified by the petitioner for Channel 233C at Hailey are 43-45-48 and 114-26-40.

filed supplemental engineering data. Therein, HLSC disputes the suitability of allotting Channel 233C at Hailey. Specifically, HLSC reports that from the site suggested for Channel 233C at coordinates 43-45-48 and 114-26-40, there are four terrain interventions which would block line-of-sight coverage of Hailey, resulting in a maximum signal of 59.1 dBu over the community rather than a 70 dBu signal as required by Section 73.315 of the Commission's Rules. Additionally, HLSC advises that the proposed site to accommodate Channel 233C at Hailey is located on U.S. Forest Service land and therefore is unlikely to be available for the construction of a transmitter. HLSC remarks that the foregoing problems are nonexistent at the site proposed for Channel 294C, which is an existing broadcast transmitter site. HLSC concludes that the site issues surrounding the suggested use of Channel 233C at Hailey would be moot if an alternate Class A channel is allotted at Twin Falls.

6. In order to resolve the conflict herein, HLSC requests the allotment of either Channel 269A, 288A or 289A to Twin Falls, to provide an additional local FM broadcast service to that community, and that Channel 294C be allotted to Hailey, as that community's first local aural transmission service, as requested.

7. E-DA-HOE, licensee of Station KSKI-FM, Channel 279C, Sun Valley, Idaho, and an applicant for Channel 298C at that community,⁹ as well as applicant for Channel 252C1 at Twin Falls, opposes the requested allotment of Channel 294C at Hailey. E-DA-HOE believes that Hailey is not a separate community under the Commission's allotment priorities. In support of its assertion, E-DA-HOE states that the market in which Hailey is located is rather unique in that there is not one single centralized community therein. Rather, E-DA-HOE argues that the focal point of the market are the resort activities in and surrounding the Sun Valley Ski Resort. Further, E-DA-HOE comments that the market communities of Hailey, Ketchum, Bellevue and Sun Valley, Idaho, are located less than 15 miles from the resort area and are linked by the resort activities. E-DA-HOE supplied information to support its belief that there is a commonality among the communities in the Sun Valley Ski Resort area and remarks that as each community is so integrally related to each other, the Sun Valley Ski Resort area should be considered as a single transmission service area. Therefore, E-DA-HOE states that the principles of the Huntington doctrine should apply. See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951). E-DA-HOE states that in Huntington, the Court adopted the premise that "where integrally related communities constitute a single metropolitan transmission service area, individual communities' needs should be presumed satisfied by the aggregate of stations in the area", citing Beaufort County Broadcasting Co. v. FCC, 787 F.2d 645, at 654 (D.C. Cir. 1986).

8. Further, E-DA-HOE comments that according to the Idaho Department of Employment, tourism is the fundamental base for employment in the valley and comprises the primary economic stimulus for the Sun Valley communities. E-DA-HOE states that a number

⁹E-DA-HOE reports that some of its principals have filed an application for Channel 298C at Sun Valley (see File No. BPH-950123MB).

of area stations' signals provide complete coverage over the Sun Valley Ski Resort area and compete for advertising revenue. In this instance, E-DA-HOE comments that if Channel 294C is allotted to Hailey it would overlap with Station KSKI-FM's contour. Therefore, as E-DA-HOE would compete with the eventual station operating on Channel 294C for listeners and advertising revenue, it believes its interests will be adversely affected if the requested allotment to Hailey is granted, citing Ted Tucker and Jana Tucker ("Tucker"), 66 RR 2d 514, 515-516 (1989) (petitioner adversely affected because it competed with station).¹⁰ Further, E-DA-HOE advises that the studio for its Station KSKI-FM is located two miles from Hailey, and that it provides programming of local interest to all of the Sun Valley Ski Resort communities.

9. E-DA HOE remarks that since the Sun Valley Ski Resort area is currently served by numerous FM stations, with the potential for two additional facilities, allotting Channel 294A to Twin Falls would result in a more efficient distribution of broadcast service.¹¹ Moreover, E-DA-HOE asserts that as HLSC has requested a Class C facility to an area much smaller in population than the Twin Falls market, for which a Class A channel is requested, the difference in size and power between the two proposals indicates that HLSC's proposal is directed at the entire Sun Valley Ski Resort area and not exclusively to Hailey. Therefore, E-DA-HOE urges dismissal of the HLSC counterproposal.

Discussion

10. A staff engineering review of the proposals herein has determined that the petitioner's suggested allotment of Channel 233C to Hailey, Idaho, at coordinates 43-45-48 and 114-26-40 to accommodate HLSC's desire to provide a first local service at that community is technically unacceptable. While Channel 233C complies with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, it would not comply with Section 73.315 to provide a 70 dBu contour over the entire community. A terrain profile analysis performed by our engineering staff confirms HLSC's assertion that at least four intervening terrain obstructions are present between the proposed site and Hailey blocking line-of-sight

¹⁰E-DA-HOE's reliance on Tucker is not applicable to this allotment proceeding as it involved an application matter concerning the alleged impact an FM translator's modification request would have on area competition.

¹¹According to E-DA-HOE, the Sun Valley Ski Resort region has a combined population of 8,423 people. Assuming that two additional stations are allotted to the Sun Valley Ski Resort, E-DA-HOE states there would be a total of six stations serving the Sun Valley Region, resulting in one station per approximately 1,400 people. Compared to Twin Falls combined population of 27,591, having eight licensed facilities, as well as the new allotment of Channel 252C1 and a potential allotment in this proceeding, resulting in possibly ten stations licensed to the Twin Falls market, E-DA-HOE avers that it would result in one station per 2,759 people. However, E-DA-HOE should note that such considerations are not factored into our allotment analysis, as it could result in favoring more populous urban areas over service to less populous rural areas.

coverage of the community. In order to clear the terrain obstacles, an actual facility built at the proposed restricted site would have to be at a maximum height of 600 meters (1,968 feet). Additionally, the proposed site location for Channel 233C is on U.S. Forest Service land, and therefore, in the absence of a reasonable assurance from the Department of Interior's Bureau of Land Management to determine whether a given area is available, construction of any kind in that area may be prohibited. See Bay Shore, New York, 25 FCC 2d 877 (1970). Therefore, as a substantial question has been raised regarding the availability of a technically feasible site to accommodate Channel 233C that complies with the Commission's rules, in accordance with established precedence, that proposal must be rejected. See Creswell, Oregon, 3 FCC Rcd 4608 (1988) and Pickneyville, Illinois, 41 RR 2d 69, 71 (1977).

11. Our studies also reveal that while Channel 294C is the only channel available to Hailey as its first local aural transmission service,¹² several alternate Class A channels are available for allotment at Twin Falls, as identified by HLSC, supra. Of the channels identified, we have selected Channel 269A for consideration at Twin Falls. Therefore, a comparative analysis of the two proposals is not required.

12. As to E-DA-HOE's concerns that due to the close proximity of its Station KSKI-FM to Hailey, an eventual station operating on Channel 294C would compete with it for listeners and advertising revenue, the Commission has previously determined that those issues are not relevant in either the allotment or licensing context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993); and Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11927 (1995).

13. Additionally, as to E-DA-HOE's assertion that HLSC's motive in seeking a Class C allotment at Hailey is to serve the entire Sun Valley Ski Resort area, no evidence has been presented to support such a presumption. Nor is it appropriate to question the intent of a proponent in an allotment proceeding. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 102 (1982). Although the ultimate license of an allotment at Hailey may provide service to the Sun Valley resort area, its primary obligation is to serve the needs and interests of the community to which it is licensed.¹³ Furthermore, while E-DA-HOE

¹²Although E-DA-HOE argues that we should apply the Huntington Doctrine and not consider that the proposed allotment at Hailey would result in a first local aural transmission service due to Hailey's commonality with other communities proximate to and serving the Sun Valley Ski Resort area, we disagree. In the first instance, the Huntington Doctrine has only been applied in the context of change of community of license proceedings or in comparative hearings involving applications, neither of which are applicable here. Secondly, even in those cases in which the Huntington Doctrine has arisen, the smaller community has been inside the urbanized area of a larger city or if proximate thereto, would provide a 70 dBu signal over 50% or more of the urbanized area, and a showing has been made of interdependency between the smaller community and the larger urban center. In this instance, Hailey is not located in nor near an urbanized area, and we find it is an independent community for allotment purposes.

¹³See Section 73.1120 of the Commission's Rules.

contends that the Sun Valley Ski Resort area is already well served by area stations, such reception service is not an adequate substitute for the provision of a first local service at Hailey. See Sarnac Lake, New York, 6 FCC Rcd 5121 (1991).

14. Based upon the information presented, we believe the public interest would benefit by adopting each proposal herein as it will provide an additional local FM service to Twin Falls, and a first local aural transmission service to Hailey, Idaho.

15. Channel 269A can be allotted to Twin Falls, Idaho, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules utilizing the city reference location at coordinates 42-33-42 and 114-28-12. With respect to Channel 294C, our engineering analysis has determined that the allotment may be made in accordance with the Commission's technical rules provided the transmitter site is located at least 19.1 kilometers (11.9 miles) southeast of Hailey at coordinates 43-22-03 and 114-12-30.¹⁴, ¹⁵

16. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 23, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with regard to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Hailey, Idaho	294C
Twin Falls, Idaho	239C1, 243C1, 252C1, 269A

¹⁴Although HLSC suggested the use of a site located 29.9 kilometers (18.5 miles) southeast of Hailey, it is the Commission's policy to impose the least restrictive theoretical site on a new proposed allotment. See Vacaville, California, 4 FCC Rcd 8315 (1989), recons. denied 6 FCC Rcd 143 (1991). Moreover, our analysis reveals that as HLSC's suggested site appears to be an inaccessible hilltop located southwest of Picabo, Idaho, coverage into Hailey would be from line-of-sight and ducting (an anomaly associated with atmospheric inversion and reflection from surrounding terrain). From that reference site, the southwestern portion of Hailey (2° and 4° west of the line-of-sight bearing at 334.44° North), would be terrain obstructed. Consequently, use of HLSC's suggested site would not comply with the Commission's technical rules. See Creswell, Oregon, supra.

¹⁵The proposed allotment of Channel 294C at Hailey meets the requirements of Section 73.207(b)(1) with respect to the allotment reference coordinates for Channel 294A at McCall, Idaho, at coordinates 44-54-30 and 116-06-00. However, it is 26.5 kilometers (16.4 miles) short spaced to a one-step, first come/first serve application for Channel 294C2 at McCall, Idaho (File No. BPH-971023MD), filed on behalf of Idaho Broadcasting Consortium, Inc. ("IBCI"). However, IBCI's application was filed after the cut-off date established in the instant proceeding for filing conflicting proposals, and therefore, consistent with existing practice, is considered to represent nothing more than the applicant's preference for a particular site. See Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, 8 FCC Rcd 4735 at 4737, 4739 (1993). See also, Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), pet. for recon. granted in part, 8 FCC Rcd 4743 (1993).

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. A filing window for Channel 269A at Twin Falls, Idaho, and for Channel 294C at Hailey, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

19. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

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